

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MISSOURI COALITION FOR THE
ENVIRONMENT,
3115 So. Grand, Ste. 650
St. Louis, MO 63118

Plaintiff,

V.

Case No.

U.S. ARMY CORPS OF ENGINEERS,
441 G Street NW
Washington, DC 20314-1000

Defendant.

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF

NATURE OF THE CASE

1. This Complaint challenges the unlawful denial of access to plaintiff Missouri Coalition for the Environment (“MCE”) of documents in the possession of defendant U.S. Army Corps of Engineers (“the Corps”) in violation of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. The Corps failed to respond to four (4) of Plaintiff’s FOIA requests in the time and the manner required by the FOIA.

2. On June 19, 2013, MCE, acting through Great Rivers Environmental Law Center, submitted a FOIA request (“June 19 FOIA request”) to the Corps of Engineers—St. Louis District seeking documents related to permits issued by the Corps pursuant to Section 404 of the Clean Water Act. Specifically, Plaintiff requested to inspect and copy documents related to Section 404 permits P-2522, P-2522b and P-2831.

3. The Corps did not respond to the June 19 FOIA request within 20 working days as required by the FOIA. After the required time frame for the Corps' response passed, Plaintiff made three (3) attempts to contact Corps officials to determine the status of the FOIA request. The Corps officials did not respond to Plaintiff.

4. On July 24, 2013, Plaintiff submitted a second FOIA request ("July 24 FOIA request") to the St. Louis District seeking documents related to Section 404 permit P-2175.

5. The Corps did not respond to the July 24 FOIA request within 20 working days as required by the FOIA.

6. On July 31, 2013, Plaintiff submitted a third FOIA request ("July 31 FOIA request") to the St. Louis District seeking documents related to Section 404 permit P-2396.

7. The Corps did not respond to the July 31 FOIA request within 20 working days as required by the FOIA.

8. On August 9, 2013, Plaintiff submitted a fourth FOIA request ("August 9 FOIA request") to the St. Louis District seeking "any spreadsheet report (or similar document) that the U.S. Army Corps of Engineers—St. Louis District maintains for the purpose of analyzing mitigation responsibilities and compliance success rates of permittees under the agency's regulatory program."

9. The Corps did not respond to the August 9 FOIA request within 20 working days as required by the FOIA.

10. Because Defendant did not respond to Plaintiff's four (4) FOIA requests within 20 working days, Defendant is unlawfully withholding public disclosure of the information sought by Plaintiff in these requests. Plaintiff seeks disclosure of the requested information under the FOIA, 5 U.S.C. § 552.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under the FOIA.

12. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases against federal governmental agencies is proper in the District of Columbia.

13. Injunctive relief is appropriate under 5 U.S.C. § 552(a)(4)(B).

PARTIES

14. Plaintiff the Missouri Coalition for the Environment (“MCE”) is a not-for-profit corporation, qualified to do business in Missouri, with its principal office located in St. Louis City, Missouri. It has approximately 700 members, most of whom reside in Missouri. MCE exists for the purposes of promoting clean water, clean air, clean energy, and a healthy environment, and actively advocates for renewable energy and energy efficiency as alternatives to fossil fuels and nuclear power in Missouri. Many of MCE’s members are interested in promoting clean water, clean air, clean energy, and a healthy environment. MCE educates and informs the public, and disseminates information through its newsletters and active web site to its own supporters, as well as the memberships of other conservation organizations, locally as well as nationally. MCE brings these claims on its own behalf, and on behalf of its members.

15. Defendant U.S. Army Corps of Engineers is an agency within the Department of the Army subject to the FOIA. 5 U.S.C. § 552(f)(1). It is charged, pursuant to Section 404 of the Clean Water Act, with regulating the discharge of fill material into the jurisdictional waters of the United States. The Corps has possession and control of the records Plaintiff seeks, which were compiled pursuant to § 404 of the Clean Water Act.

FACTUAL BACKGROUND

A. The June 19 FOIA Request

16. On June 19, 2013, MCE, acting through Great Rivers Environmental Law Center, submitted a FOIA request to the Corps of Engineers—St. Louis District seeking documents related to permits issued by the Corps pursuant to Section 404 of the Clean Water Act. Specifically, Plaintiff requested to inspect and copy “any and all documents with regard to permit number P-2522b....” Plaintiff also requested to inspect and copy more specific documents related to permit numbers P-2522 and P-2831.

17. Plaintiff did not seek expedited processing of the June 19 FOIA request under 5 U.S.C. § 552(a)(6)(E).

18. On July 25, 2013, Plaintiff sent an email to the St. Louis District’s FOIA Coordinator, Kelly Bertoglio, asking when the June 19 FOIA request would be fulfilled and attached a copy of the FOIA request. Ms. Bertoglio has not responded.

19. On August 7, 2013, Plaintiff attempted to contact Ms. Bertoglio by telephone. Ms. Bertoglio did not answer and Plaintiff left a voicemail asking her to contact Plaintiff to provide information on when the June 19 FOIA request would be fulfilled. Ms. Bertoglio has not responded.

20. On August 8, 2013, Plaintiff attempted to contact Anne Woodrome, an employee who works with Ms. Bertoglio in the St. Louis District’s Office of Counsel, by telephone to ask when the June 19 FOIA request would be fulfilled. Ms. Woodrome did not answer and Plaintiff left a voicemail asking her to contact Plaintiff to provide information on when the June 19 FOIA request would be fulfilled or to have Ms. Bertoglio do the same. Neither Ms. Woodrome nor Ms. Bertoglio responded.

21. The Corps did not notify Plaintiff of its determination whether the agency would comply with Plaintiff's June 19 FOIA request within 20 working days as required by 5 U.S.C. § 552(a)(6)(A)(i), 32 C.F.R §§ 286.23(e)(1), and 518.16(i).

22. The Corps did not comply with the provisions of 5 U.S.C. § 552(a)(6)(B) for extension of time for the June 19 FOIA request.

23. Plaintiff has exhausted the administrative remedies available under the FOIA. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).

24. Plaintiff has been required to expend costs and to obtain the services of a law firm to prosecute this action.

B. The July 24 FOIA Request

25. On July 24, 2013, Plaintiff submitted a second FOIA request to the Corps requesting "any and all documents with regard to Permit Number P-2175...."

26. Plaintiff did not seek expedited processing of the July 24 FOIA request under 5 U.S.C. § 552(a)(6)(E).

27. The Corps did not notify Plaintiff of its determination whether the agency would comply with Plaintiff's July 24 FOIA request within 20 working days as required by 5 U.S.C. § 552(a)(6)(A)(i), 32 C.F.R §§ 286.23(e)(1), and 518.16(i).

28. The Corps did not comply with the provisions of 5 U.S.C. § 552(a)(6)(B) for extension of time for the July 24 FOIA request.

29. Plaintiff has exhausted the administrative remedies available under the FOIA. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).

30. Plaintiff has been required to expend costs and to obtain the services of a law firm to prosecute this action.

C. The July 31 FOIA Request

31. On July 31, 2013, Plaintiff submitted a third FOIA request to the Corps requesting “the June, 2005 mitigation plan for the activities authorized by Permit No. P-2396 that was submitted by Jacobs Civil Inc., entitled ‘Lakeside 370 Business Park Project, Compensatory Mitigation Plan.’”

32. Plaintiff did not seek expedited processing of the July 31 FOIA request under 5 U.S.C. § 552(a)(6)(E).

33. The Corps did not notify Plaintiff of its determination whether the agency would comply with Plaintiff’s July 31 FOIA request within 20 working days as required by 5 U.S.C. § 552(a)(6)(A)(i), 32 C.F.R §§ 286.23(e)(1), and 518.16(i).

34. The Corps did not comply with the provisions of 5 U.S.C. § 552(a)(6)(B) for extension of time for the July 31 FOIA request.

35. Plaintiff has exhausted the administrative remedies available under the FOIA. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).

36. Plaintiff has been required to expend costs and to obtain the services of a law firm to prosecute this action.

D. The August 9 FOIA Request

37. On August 9, 2013, Plaintiff submitted a fourth FOIA request to the Corps requesting “any spreadsheet report (or similar document) that the U.S. Army Corps of Engineers—St. Louis District maintains for the purpose of analyzing mitigation responsibilities and compliance success rates of permittees under the agency’s regulatory program....”

38. Plaintiff did not seek expedited processing of the August 9 FOIA request under 5 U.S.C. § 552(a)(6)(E).

39. The Corps did not notify Plaintiff of its determination whether the agency would comply with Plaintiff's August 9 FOIA request within 20 working days as required by 5 U.S.C. § 552(a)(6)(A)(i), 32 C.F.R §§ 286.23(e)(1), and 518.16(i).

40. The Corps did not comply with the provisions of 5 U.S.C. § 552(a)(6)(B) for extension of time for the August 9 FOIA request.

41. Plaintiff has exhausted the administrative remedies available under the FOIA. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).

42. Plaintiff has been required to expend costs and to obtain the services of a law firm to prosecute this action.

CLAIM FOR RELIEF

Unlawful withholding of records under the FOIA

43. Plaintiff realleges and incorporates by reference paragraphs 1 through 42 above.

44. The materials requested in the FOIA requests dated June 19, July 24, July 31, and August 9, 2013, are agency records of the Army Corps of Engineers within the meaning of 5 U.S.C. § 552. Plaintiff requested release of these records under the FOIA; the Corps did not respond to these requests within the statutorily mandated time frame; and Plaintiff has exhausted its administrative remedies because the Corps failed to comply with the applicable response time limit of 20 working days allowed by the statute for each request.

45. Plaintiff has a statutory right under the FOIA to the release of some or all of the records it seeks. There is no legal basis for Defendant's failure to release those records promptly.

46. Based on the nature of Plaintiff's organizational activities, it will undoubtedly continue to employ the FOIA's provisions in information requests to Defendant in the foreseeable future.

47. Plaintiff's organizational activities will be adversely affected if Defendant is allowed to continue violating the FOIA's disclosure provisions as it has in this case.

48. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, Defendant will continue to violate the rights of Plaintiff to receive public records under the FOIA.

49. Defendant's failure to release the requested records is in violation of the FOIA. 5 U.S.C. § 552(a)(6). The court should order the production of the agency records that have been improperly withheld from MCE. 5 U.S.C. 552(a)(4)(B).

50. Plaintiff is entitled to reasonable costs of litigation, including attorneys' fees and costs pursuant to the FOIA. 5 U.S.C. § 552(a)(4)(E).

DEMAND FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendant to promptly provide Plaintiff all of the information sought in this action.
2. Declare Defendant's failure to disclose the information requested by Plaintiff to be unlawful under the FOIA, 5 U.S.C. § 552(a)(6).
3. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E).
4. Grant such other and further relief as the Court deems just and proper.

/s/ Kathleen G. Henry

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